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U.S. Citizenship  
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 10 2008**  
[consolidated therein]

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:  
[redacted]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant is a native and citizen of Guatemala, who initially entered the United States on October 20, 1969, on a B-1/B-2 nonimmigrant visa with authorization to remain in the United States until July 20, 1970. The applicant failed to depart the United States, and on August 21, 1975, an Order to Show Cause (OSC) was issued against the applicant. On September 11, 1975, an immigration judge granted the applicant voluntary departure until October 15, 1975. The applicant departed the United States on October 6, 1975. On February 10, 1976, the applicant entered the United States without inspection. On April 5, 1976, an OSC was issued against the applicant. On April 13, 1976, the applicant was deported from the United States. On June 12, 1979, the applicant entered the United States without inspection. On February 20, 1980, an OSC was issued against the applicant. On March 6, 1980, an immigration judge granted the applicant voluntary departure until September 6, 1980. The applicant failed to depart the United States as ordered, and on September 8, 1980, a Warrant of Deportation (Form I-205) was issued. On January 8, 1981, the applicant was deported from the United States. Based on the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant reentered the United States without inspection sometime later in January 1981. On June 21, 1994, the applicant's mother, [REDACTED], filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On July 25, 1994, the applicant's Form I-130 was approved. On October 31, 2003, the applicant filed a Form I-485. At some point, the applicant's mother became a United States citizen; however, on January 26, 2006, the applicant's mother passed away. On or about November 29, 2006, the applicant's sister, [REDACTED], a naturalized United States citizen, filed a Form I-130 on behalf of the applicant. There is no evidence in the record that the Form I-130 has been approved. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his naturalized United States citizen siblings.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors, and denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Director's Decision*, dated October 18, 2006.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

Section 212(a)(6)(A). Illegal entrants and immigration violators.-

Aliens present without admission or parole.-

(i) In general.- An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary], is inadmissible.

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

On appeal, the applicant, through counsel, contends that there are "[n]o records [that] establish that [the] Applicant was formally 'deported' or 'removed.'" *Form I-290B*, filed November 20, 2006. The AAO notes that the record contains evidence that the Service deported the applicant from the United States on April 13, 1976 and January 8, 1981. Counsel asserts that the director's decision "violates a Temporary Restraining Order in *Duran Gonzalez v. DHS*, 2:06-cv-1411 (W.D. Wash), the class action over DHS' refusal to follow the Ninth Circuit in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004)." *Id.* (emphasis added). However, the AAO notes that the Director did not find the applicant inadmissible under section 212(a)(9)(C) of the Act, which is the section of the Act that is being reviewed by the Ninth Circuit Court of Appeals. Counsel claims that the director "failed to follow regulatory and case law in the consideration 'of all pertinent factors' where the Director relied on speculation of certain negative factors and then ignored certain documented positive factors." *Id.* The AAO notes that the applicant submitted evidence of employment in the United States since 1971; however, most of the time that the applicant was employed in the United States was without authorization, and that is an unfavorable factor. Additionally, the applicant has been residing in the United States for a long period of time without authorization and that is also an unfavorable factor.

In consideration of the *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), factors, the AAO finds that the applicant has established that the favorable factors outweigh the unfavorable factors in his case. The AAO notes that the applicant was last deported over twenty-seven (27) years ago. Additionally, the applicant stopped drinking alcohol in 1990, and he established his reformation and rehabilitation by attending a Drinking and Driving Program and Alcoholics Anonymous. Furthermore, the applicant's arrests for driving under the influence, are from over twenty (20) years ago. [REDACTED] states the applicant suffers from various medical conditions, including Hypertension, Diabetes mellitus, Type II, Hyperlipidemia, Allergic rhinitis, Cataracts, Idiopathic tremor, Depression, and Complications of Diabetes. See letter from [REDACTED] M.D., dated November 29, 2006. The AAO notes that the applicant submitted evidence on the inferior medical services in Guatemala when compared to the United States; therefore, the applicant established that he could not receive the same or similar treatment for his medical conditions in Guatemala.

The record of proceeding reveals that on February 10, 1976, the applicant entered the United States without inspection. On April 5, 1976, an OSC was issued against the applicant. On April 13, 1976, the applicant was deported from the United States. On June 12, 1979, the applicant entered the United States without inspection. On March 6, 1980, an immigration judge granted the applicant voluntary departure. The applicant failed to depart the United States as ordered, and on September 8, 1980, a Form I-205 was issued. On January 8, 1981, the applicant was deported from the United States. Based on the applicant's previous order of deportation, the applicant is clearly inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212 Application for Permission to Reapply After Deportation:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's family ties to citizens of the United States, his siblings, general hardship they may experience, letters of recommendation, a history of paying taxes, the recency of his deportations, and evidence of his reformation and rehabilitation. The AAO notes that the applicant has a criminal record, but he has not been arrested in over twenty (20) years, which is a favorable factor.

The AAO finds that the unfavorable factors in this case include the applicant's entries without inspection, his failure to abide by an order of deportation, his illegal reentry into the United States subsequent to his January 8, 1981 deportation, and periods of unauthorized employment and presence.

While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained and the application approved.